



Agenda Date: 10/28/09
Agenda Item: 2C

**STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu**

DIVISION OF ENERGY

IN THE MATTER OF A PILOT PROGRAM ALLOWING)
SUB- METERING (FORMERLY CHECK-METERING) IN)
RESIDENTIAL PROPERTIES REGULATED BY THE) ORDER TO SHOW CAUSE
NEW JERSEY HOUSING AND MORTGAGE)
FINANCING AGENCY.)

DOCKET NO. AO05080734

(SERVICE LIST ATTACHED)

BY THE BOARD:

The New Jersey Board of Public Utilities ("Board"), by way of an Order to Show Cause, says:

1. The Board, pursuant to N.J.S.A. 48:2-1 et seq., has been granted general supervision and regulation of and jurisdiction and control over public utilities in New Jersey. A determination of whether to permit sub-metering is within the lawful discretion of the Board. See Sixty-Seven South Munn v. Board of Public Utility Commissioners, 106 N.J.L. 45 (Sup. Ct. 1929), aff'd, 107 N.J.L. 386 (E & A 1930), cert. denied, 283 U.S. 828; 51 S. Ct. 352; 75 L. Ed. 1441 (1931).

2. Respondent New Jersey Housing & Mortgage Finance Agency ("NJHMFA") is established under, but is not a part of, the Department of Community Affairs and is constituted as a body politic and corporate and an instrumentality of the state, exercising public and essential governmental functions.

3. Respondent Marineview Housing, LP ("Marineview") is the owner of a 433 unit apartment complex known as Marineview Plaza, Hoboken, New Jersey, HMFA No. 00298.

4. Respondent Union Plaza Associates, L.P. ("Union Plaza") is the owner of an apartment complex known as Union Plaza Apartments, Union City, New Jersey, HMFA No. 00007.

5. As memorialized in the Board's Order In the Matter of a Pilot Program Allowing Sub-Metering (Formerly Check-Metering) in Residential Properties Regulated by the New Jersey Housing & Mortgage Finance Agency, September 14, 2005, the Board initiated a 5 year

Pilot Program on Sub-Metering in conjunction with the NJHMFA, to be administered and monitored by NJHMFA ("the Sub-Metering Pilot Program"). The Board noted that the Sub-Metering Pilot Program was intended to serve conservation objectives, was limited to NJHMFA mortgaged properties, subject to policies and procedures established by NJHMFA, and ultimately subject to NJHMFA approval.

6. NJHMFA selected Marineview and Union Plaza to participate in the Sub-Metering Pilot Program.

7. Prior to implementation, the Union Plaza Tenants Association challenged the landlord's right to implement the program at Union Plaza. Union Plaza Tenants' Association et al. v. Union Plaza Associates, L.P. et al., HUD-L-643-08. A decision upholding the landlord's right to implement the program is current on appeal. A-005897-08T3. This decision did not impact the placement of sub-meters at Marineview.

8. Sub-meters were installed at Marineview. On or about February 2008 tenants were given dummy sub-metering bills.

9. On or about June 2008, sub-metering was implemented at Marineview. As part of the implementation of sub-metering, Marineview entered into modified lease agreements with tenants which included rental rebates and other modified terms to implement sub-metering. As such, tenants received a reduction in rent commensurate with their expected energy costs.

10. In August 2009, NJHMFA contacted Board staff and identified alleged billing discrepancies in the Sub-Metering Pilot Program at Marineview. NJHMFA provided data it had compiled from 18 months of sub-metering bills, showing that approximately 32% of the units in Marineview have significant variances in their billing (14% underpaying the expected costs of energy and 18% overpaying the expected costs of energy), with monthly bills for comparably sized units as low as \$10 and as high as \$600.

11. NJHMFA issued a letter to Marineview, reiterating its request to discontinue the project immediately and return the tenants to their pre pilot project rents, which included a uniform charge for electricity. NJHMFA specifically outlined concerns regarding cross wiring in sub-meters within residential units, the failure to install common area sub-meters and concerns regarding inequities in residential billing relating to energy inefficient units and structural deficiencies.

12. The Board considered the matter at its August 19, 2009 agenda meeting and issued a Secretary's letter authorizing NJHMFA to take appropriate action, including suspending sub-metering at Marineview and returning tenants to their pre-pilot project rents, which included a uniform charge for electricity.

13. On or about October 26, 2009 Marineview submitted a letter to the Board, as well as a certification, indicating that it was prepared to implement various changes and reviews of the sub-meter installation and implementation. Marineview indicated that it could not implement any changes until HMFA approved the expenditure of funds. Marineview stated that it would take 8-12 weeks to implement its proposed changes. Marineview also submitted a certification indicating that, overall, less electricity is being used in the building and that tenants have conserved energy and are saving money. Marineview further asserted that suspension of the program would cause "substantial confusion and an administrative nightmare." Marineview also claimed that it is not unusual to see "the ratio between the highest and the lowest bills to be

more than 10 to 1," even after excluding vacant apartments. "The variation in the tenant's electricity usage habits is the primary factor resulting in the wide variance in electricity bills."

14. Nevertheless, NJHMFA believes that the implementation of sub-metering has created significant billing disparities that must be addressed prior to moving forward with this program.

15. Based upon the above, the Board has reason to believe that the Sub-Metering Pilot Program is not functioning in the best interest of the State or the residents of the buildings such that immediate suspension of the program is appropriate.

Therefore, the Board HEREBY ORDERS respondents to SHOW CAUSE before the Board, based upon its written submissions, on November 20, 2009:

Why a Final Order should not be issued, suspending the Sub-Metering Pilot Program, including any sub-meter billing occurring at Marineview . During this suspension no additional properties will be permitted to apply to participate in the Sub-Meter Pilot Program;

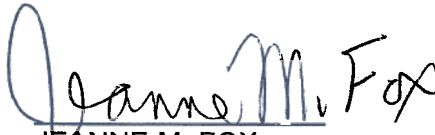
It is FURTHER ORDERED that the respondents are to file within 15 days of service of this Order to Show Cause (1) an answer to the Order to Show Cause in accordance with N.J.A.C. 1:1-6.1 and N.J.A.C. 14:1-4.1 et seq., and (2) exhibits which the respondent intends to rely upon in opposition to the relief sought in this Order to Show Cause, by serving the same upon the Secretary of the Board, Two Gateway Center, Newark, New Jersey 07102 and Deputy Attorney General Geoffrey R. Gersten, Department of Law and Public Safety, Division of Law, P.O. Box 45029, 124 Halsey Street, Newark, New Jersey 07101. Failure to file an answer will result in a Final Order being issued by the Board consistent with the relief sought herein.

It is FURTHER ORDERED that any interested party may file a brief in this matter no later than November 13, 2009, by serving the same upon the Secretary of the Board, Two Gateway Center, Newark, New Jersey 07102 and Deputy Attorney General Geoffrey R. Gersten, Department of Law and Public Safety, Division of Law, P.O. Box 45029, 124 Halsey Street, Newark, New Jersey 07101.

It is FURTHER ORDERED that a copy of the answers and any brief(s) shall be served upon Debra Robinson, Deputy Public Advocate, Department of Public Advocate, Division of Rate Counsel, 31 Clinton Street, Newark, New Jersey 07101 as well as each respondent and the respective tenants associations at Marineview and Union Plaza.

DATED: 10/28/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

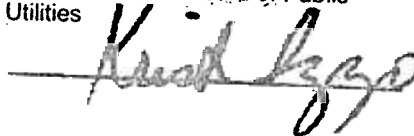

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



**IN THE MATTER OF A PILOT PROGRAM ALLOWING SUB- METERING (FORMERLY
CHECK-METERING) IN RESIDENTIAL PROPERTIES REGULATED BY THE NEW JERSEY
HOUSING AND MORTGAGE FINANCING AGENCY.**

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